

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2000 Biennial Review: Spectrum Aggregation	)	WT Docket No. 01-14
Limits for Commercial Mobile Radio Services	)	
_____	)	

**SPRINT PCS OPPOSITION**

Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint PCS”) hereby opposes the two petitions asking the Commission to reconsider its decision to retain the cellular cross-interest rule in Rural Service Areas (“RSAs”).<sup>1</sup>

**I. THE FCC PROPERLY RETAINED THE CELLULAR CROSS INTEREST RULE AFTER ANALYZING THE COSTS AND BENEFITS OF THE RULE IN RSAS**

In the *Second Spectrum Cap Biennial Review Order*,<sup>2</sup> the Commission undertook an analysis of competition in the CMRS marketplace, utilizing FCC data and the extensive record associated with the spectrum cap proceeding. As part of this review, the Commission studied the state of competition in both urban and rural areas. The data available to the FCC established that CMRS markets in rural areas are quite distinct from markets in urban areas. More specifically, in 76% of RSA counties, no more than one broadband PCS provider is competing with the cel-

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<sup>1</sup> See *Public Notice*, Petitions for Reconsideration of Action in Rulemaking Proceedings, Report No. 2540 (March 15, 2002), 67 Fed. Reg. 13183 (March 21, 2002).

<sup>2</sup> See *2000 Biennial Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14, *Report and Order*, FCC 01-328, 16 FCC Rcd 22668 (Dec. 18, 2001)(“*Second Spectrum Cap Biennial Review Order*”).

lular incumbents in any part of the county.<sup>3</sup> Further, 56% of RSA counties have two or fewer facilities-based providers of mobile telephony offering service.<sup>4</sup>

The current cellular cross-interest rule guarantees that the two incumbent cellular licensees in RSAs will remain independent, thereby ensuring that residents in rural areas will have a choice of at least two carriers in all areas. And, as detailed in Sprint PCS' Reply Comments in the spectrum cap proceeding,<sup>5</sup> maintenance of the cellular cross interest rule in RSAs also protects consumers throughout the United States that utilize roaming services. By contrast, if rural cellular providers were permitted to merge, the resulting company would enjoy a monopoly in the wholesale roaming market. This could lead to higher prices for roaming services for consumers everywhere.

Cingular and three mid-sized carriers – Dobson, Western Wireless and Rural Cellular (“Dobson, *et al.*”) – ask the Commission to abrogate the cellular cross interest rule. Sprint PCS submits that permitting rural markets to become a cellular monopoly is not in the public interest – at least based on the record evidence now before the Commission.<sup>6</sup>

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<sup>3</sup> See *id.* at ¶¶ 88-89.

<sup>4</sup> See *id.* at ¶¶ 34-89. In other words, according to Commission data, residents of over half of all RSA counties have *at most* a choice of only two providers of commercial mobile radio service (“CMRS”) – the two incumbent cellular carriers.

<sup>5</sup> See Sprint PCS Reply Comments, WT Docket No. 01-14, at 8-9 (May 14, 2001).

<sup>6</sup> See *Second Spectrum Cap Biennial Review Order* at ¶ 7. See also *id.* at n.254 (“The record contains neither anecdotal information nor data on the state of competition in RSAs.”).

**A. Cingular Provides No Facts in Support of Its New Arguments**

Cingular criticizes the Commission for its “failure to define the relevant market for purposes of the Commission’s competitive analysis and take into account actual carrier service plans.”<sup>7</sup> This criticism is unfounded. In its NPRM, the Commission explicitly asked parties proposing to eliminate the cross-interest rules to submit “empirical evidence and/or studies.”<sup>8</sup> Neither Cingular, nor any other party, submitted such evidence in their comments filed in response to the NPRM. In fact, in its Petition for Reconsideration, Cingular advances arguments based on facts that have not previously been presented to the Commission – reason enough for the FCC to dismiss Cingular’s petition.<sup>9</sup>

Cingular now argues that a merger of the only two CMRS carriers in an area would not adversely affect residents of rural areas because they will be protected by the availability of regional and national pricing plans:

[P]rices will be constrained in that [rural] market by the regional or national plans of the carrier in that market. In other words, RSAs will still receive the benefits of competition in adjacent MSAs.<sup>10</sup>

Cingular does not, however, submit facts in support of its new argument.

Sprint PCS concedes that Cingular is correct that in many areas residents of rural areas can purchase regional or national plans.<sup>11</sup> But, the Commission should not permit a reduction in

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<sup>7</sup> Cingular Petition at 3.

<sup>8</sup> *Second Spectrum Cap Biennial Review NPRM*, 16 FCC Rcd 2763, 2776 ¶ 23 (2001).

<sup>9</sup> See 47 C.F.R. § 1.429(b). In response to the NPRM, Cingular argued that the FCC should abrogate the cross-interest rule because (a) urban markets are robustly competitive, and (b) retention of the rule would conflict with the regulatory parity directive. See Cingular Comments at 40-42 (April 13, 2001). Sprint PCS demonstrated that the regulatory parity argument lacked merit, see Sprint PCS Reply Comments at 9 n.27 (May 14, 2001), and Cingular chose not to repeat this argument in its reconsideration petition.

<sup>10</sup> Cingular Petition at 5.

<sup>11</sup> See *id.* at 4-5.

choices available to rural residents without concrete evidence that a monopoly in the provision of mobile services will not, in fact, harm residents of rural areas. If such facts exist, they are not in the record.

Cingular also does not identify a single public benefit by allowing two rural cellular carriers to merge. With the elimination of the spectrum cap, rural cellular carriers no longer need to merge to acquire additional spectrum, since each carrier can separately acquire spectrum to supplement its spectrum needs. Although there may be certain efficiency gains by the combination of two rural cellular providers, the Commission must balance such benefits with the impact upon consumers. In addition, as the Commission has recognized, the efficiency argument goes only so far:

At some point . . . horizontal concentration starts to work against those goals [of efficiencies and economies] because it results in fewer competitors, less innovation and experimentation, higher prices and lower quality, and these disadvantages outweigh any advantages in terms of economies and efficiency.<sup>12</sup>

The Commission has stated that it will evaluate the continued validity of the cellular cross-interest rule later this year, when it commences its Third Biennial Review.<sup>13</sup> That proceeding will provide a further opportunity for Cingular to submit evidence to support its view that residents of rural areas would not be harmed by a monopoly in the provision of mobile services.

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<sup>12</sup> *1996 Spectrum Cap Order*, 11 FCC Rcd 7824, 7869 ¶ 95 (1996).

<sup>13</sup> *See Second Spectrum Cap Biennial Review Order* at ¶ 88.

**B. The Arguments Put Forth by Dobson, *et al.* Lack Merit**

As noted above, the Commission abrogated the cross-interest rule in MSAs, but retained the rule in RSAs, because of significant differences in the level of competition.<sup>14</sup> Three mid-sized cellular carriers – Dobson, Western Wireless and Rural Cellular – assert that the Commission’s decision to treat MSAs differently than RSAs is “paternalistic and fundamentally arbitrary.”<sup>15</sup> This argument, however, is contradicted by the facts – facts which Dobson, *et al.* do not directly challenge.<sup>16</sup>

Dobson, *et al.* further contend that there is no evidence demonstrating “a direct correlation between the number of facilities-based carriers in a geographic market [and] the impact and quality of the CMRS competition in the market.”<sup>17</sup> Yet, the history of the CMRS industry demonstrates that competition in the mobile sector did not intensify until PCS licensees entered the market to provide additional competition to the incumbent cellular carriers. As the Commission noted only last year, “available data indicate that the entrance of new competitors into the mobile telephone market continues to reduce prices.”<sup>18</sup>

As was the case with Cingular’s Petition, Dobson, *et al.*’s principal argument is new to this proceeding: retention of the cross-interest rule “will have significant adverse business consequences for Petitioners.”<sup>19</sup> The *only* adverse business consequence the Petitioners identify, how-

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<sup>14</sup> *Second Spectrum Cap Biennial Review Order* at ¶¶ 86, 89.

<sup>15</sup> Dobson, *et al.* at 3. *See also id.* at 4 (“[T]he MSA/RSA distinction is arbitrary and capricious”).

<sup>16</sup> *See Id.* at 3

<sup>17</sup> *Id.* at 4-5.

<sup>18</sup> *Sixth CMRS Competition Report*, 16 FCC Rcd 13350, 13377-78 (2001).

<sup>19</sup> Dobson, *et al.* at 7. Dobson and Rural Cellular did not file any comments in this docket. Western’s participation was limited to five pages of reply comments where it did not separately address the cellular cross-interest rule. Western Reply Comments (May 14, 2001). Western later argued that rural consumers would benefit from the “efficiency” of a monopoly, Western *Ex Parte* (Oct. 30, 2001). Western chose not to repeat this argument in its reconsideration petition.

ever, is that *if* they need additional financing (and they do not allege they do), they can deal with everyone other than another cellular carrier that (a) happens to own an overlapping cellular license *and* (b) is unwilling to disaggregate the overlapping license if the parties decide to merge:

Petitioners are in the difficult position of either limiting the pool of potential merger or financing partners to non-cellular licensees or negotiating transactions that involve disaggregating overlapping cellular markets.<sup>20</sup>

Even if one could accurately characterize this possibility as “severely limiting” Petitioners’ business opportunities,<sup>21</sup> the Petitioners have submitted no facts demonstrating that (a) they need additional financing, (b) they cannot obtain such financing, *and* (c) their inability to obtain financing is due to the fact that their only alternative is another cellular carrier that happens to serve an overlapping market but refuses to sell its system in that market. Further, the Commission’s waiver rules are designed precisely for such unique circumstances and the *Second Spectrum Cap Biennial Review Order* makes clear that the Commission will entertain requests for waiver in appropriate circumstances.<sup>22</sup>

More fundamentally, and ignored in the Petition, the Commission is required to consider the public interest, not the business interests of individual firms. Given the state of competition in rural areas, it would be the elimination of the cross-interest rule, and not its retention, that would lead to “the perverse result of greater concentration in rural markets.”<sup>23</sup>

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<sup>20</sup> Dobson, *et al.* at 8.

<sup>21</sup> *Id.*

<sup>22</sup> *Second Spectrum Cap Biennial Review Order* at ¶ 91.

<sup>23</sup> Dobson, *et al.* at 8.

## II. THE PETITIONS FAIL TO ADDRESS THE NEGATIVE IMPACTS A MONOPOLY WOULD HAVE IN THE WHOLESALE ROAMING MARKET

Petitioners also ignore entirely the consequences that the merger of two rural cellular carriers would have on the wholesale roaming market, a market that impacts the prices mobile customers nationwide pay for service.

The Commission has noted repeatedly that “ubiquitous roaming on CMRS systems is important to the development of a seamless, nationwide, ‘network of networks.’”<sup>24</sup> While wholesale roaming rates have been slowly declining,<sup>25</sup> roaming usage continues to climb and roaming represents a highly profitable business for Dobson, *et al.*:

	Average Roaming Rate Per MOU <sup>26</sup>	Average Network Cost Per MOU <sup>27</sup>	Profit Per MOU
Dobson	\$0.37	\$0.114	\$0.256
Rural Cellular	\$0.37	\$0.114	\$0.256
Western Wireless	\$0.35	\$0.114	\$0.236

The principal reason wholesale roaming rates are beginning to decline is because carriers like Sprint PCS are gradually enjoying increased choice in potential roaming partners. As is the case in the retail CMRS market, competition leads to lower prices.

A carrier in need of a roaming arrangement in the majority of RSA counties typically has a choice of only two potential partners: the two incumbent cellular carriers. Although a market

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<sup>24</sup> *Roaming NPRM*, 15 FCC Rcd 21626, 21634 ¶ 15 (2000). See also *Second CMRS Interconnection Order*, 11 FCC Rcd 9462, 9464 ¶ 2 (1996).

<sup>25</sup> See *Sixth CMRS Competition Report*, 16 FCC Rcd at 13380-81.

<sup>26</sup> See Merrill Lynch, *The Next Generation V*, at 24 (March 9, 2001). The average roaming rates listed are for year 2000.

<sup>27</sup> See Salomon Smith Barney, *Wireless by the Minute: Reviewing the Wireless Economic Model*, at 4 (Jan. 3, 2001).

consisting of only two potential wholesale providers is not fully competitive, such a market certainly is preferable to a market with only one provider. Abrogating the cross-interest rule in RSAs in order to facilitate the merger of the two cellular carriers would mean that other CMRS carriers would no longer have *any* choice of roaming partners in rural areas. The merged cellular carrier would maintain a monopoly in the provision of roaming services. Without competitive pressure, a new cellular monopoly could price its roaming services at will – impacting mobile consumers nationwide.

### **III. CONCLUSION**

Later this year, the Commission will commence its Third Biennial Review, where it will reexamine the continued validity of the cellular cross-interest rule in RSAs. Given the fact that this issue will be subject to additional examination later this year, and the existence of a waiver mechanism for situations in which application of the rule does not make sense, now is not the time to abrogate a rule based on new arguments unsupported by facts.



For the foregoing reasons, Sprint PCS respectfully requests that the Commission deny the reconsideration petitions filed by Cingular, Dobson, Western Wireless and Rural Cellular.

Respectfully submitted,

**SPRINT SPECTRUM L.P., d/b/a Sprint PCS**

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